

## Internal Revenue Service

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Washington, DC 20224

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, ID No.

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In Re:

Refer Reply To:  
CC:PSI:B05  
PLR-130003-10  
Date:  
December 14, 2010

### LEGEND:

Taxpayer =

Project =

Year 1 =

Dear :

This letter responds to a letter dated July 7, 2010, submitted on behalf of Taxpayer by its authorized representative, requesting an extension of time to make the election under § 42(g)(1) and the election under § 142(d)(4)(B) (made applicable by § 42(g)(4)) of the Internal Revenue Code pursuant to § 301.9100-1 of the Procedure and Administration Regulations.

According to the information submitted, Taxpayer placed Project in service in Year 1. Taxpayer failed to make effective elections under § 42(g)(1) and § 142(d)(4)(B) consistent with Taxpayer's intent, as evidenced by Taxpayer's contemporaneous documentation, and its return filing consistent with this intent.

Section 42(g)(1) defines qualified low-income housing project as any project for residential rental property if the project meets the requirements of § 42(g)(1)(A) or (B), whichever is elected by the taxpayer. The project meets the requirements of § 42(g)(1)(A) if 20 percent or more of the residential units are both rent-restricted and occupied by individuals whose income is 50 percent or less of area median gross income. The project meets the requirements of § 42(g)(1)(B) if 40 percent or more of

the residential units are both rent-restricted and occupied by individuals whose income is 60 percent or less of area median gross income.

Section 42(l)(1) provides that following the close of the first taxable year in the credit period with respect to any qualified low-income building, the taxpayer shall certify to the Secretary (at such time and in such form and in such manner as the Secretary prescribes) (D) the election made under § 42(g) with respect to the qualified low-income housing project of which such building is a part, and (E) such other information as the Secretary may require. In the case of a failure to make the certification required by the preceding sentence on the date prescribed therefor, unless it is shown that such failure is due to reasonable cause and not to willful neglect, no credit shall be allowable by reason of § 42(a) with respect to such building for any taxable year ending before such certification is made.

Section 301.9100-7T(b) of the temporary Procedure and Administration Regulations provides that for elections under the Tax Reform Act of 1986, the election under § 42(g)(1) must be made for the taxable year in which the project is placed in service and shall be made in the certification required to be filed pursuant to § 42(l)(1). Form 8609 serves the purpose of the certification required to be filed pursuant to § 42(l)(1) and includes the election under § 42(g)(1). Section 301.9100-7T(a)(4)(i) provides that the election under § 42(g)(1) is irrevocable.

Section 42(g)(4) makes applicable to § 42 projects the special rule under § 142(d)(4) for deep rent-skewing. Section 142(d)(4)(B) provides that a project is a deep rent skewed project if the owner of the project elects to have § 142(d)(4) apply and, at all times during the qualified project period, the project meets the following requirements: (i) 15 percent or more of the low-income units in the project are occupied by individuals whose income is 40 percent or less of area median gross income; (ii) the gross rent with respect to each low-income unit in the project does not exceed 30 percent of the applicable income limit that applies to individuals occupying the unit; and (iii) the gross rent with respect to each low-income unit in the project does not exceed 50 percent of the average gross rent with respect to units of comparable size that are not occupied by individuals who meet the applicable income limit.

Section 301.9100-7T(a)(2)(i) of the temporary Procedure and Administration Regulations provides that the election under § 142(d)(4)(B) must be made by the due date (taking extensions into account) of the tax return for the first taxable year for which the election is to be effective. Section 301.9100-7T(a)(3)(i) provides that the election under § 142(d)(4)(B) must be made by attaching a statement to the tax return for the taxable year for which the election is to be effective. The statement must (A) contain the name, address, and taxpayer identification number of the electing taxpayer; (B) identify the election; (C) indicate the section of the Code under which the election is being made; (D) specify, as applicable, the period for which the election is being made and/or the property or other items to which the election is to apply; and (E) provide any

information required by the relevant statutory provisions and any information necessary to show that the taxpayer is entitled to the election. For purposes of § 42, Form 8609 serves the purpose of the statement for making the § 142(d)(4)(B) election and the information required by § 301.9100-7T(a)(3)(i). Section 301.9100-7T(a)(4)(i) provides that the election under § 142(d)(4)(B) is irrevocable.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner of Internal Revenue will use to determine whether to grant an extension of time to make an election.

Section 301.9100-1(b) defines the term “regulatory election” as including an election whose due date is prescribed by a regulation, revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

Under § 301.9100-1(c), the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Code, except subtitles E, G, H, and I.

Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of § 301.9100-2.

Requests for relief under § 301.9100-3(a) will be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

In the instant case, based solely on the facts submitted and the representations made, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been met. Accordingly, Taxpayer is granted an extension of time to make the elections under § 42(g)(1) and § 142(d)(4)(B) for Project by filing within 120 days from the date of this letter an amended Form 8609 that includes the intended elections. The amended Form 8609 (along with a copy of this letter) is to be sent to the following address:

Department of the Treasury  
Internal Revenue Service Center  
Philadelphia, PA 19255-0549

No opinion is expressed or implied regarding the application of any other provisions of the Code or regulations. Specifically, we express no opinion on whether Project otherwise qualifies under §§ 42 and 142(d)(4).

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the power of attorney on file, a copy of this letter is being sent to Taxpayer's authorized representative.

Sincerely,

Associate Chief Counsel  
(Passthroughs & Special Industries)

By: \_\_\_\_\_  
CHRISTOPHER J. WILSON  
Senior Counsel, Branch 5  
Office of Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures  
Copy for § 6110 purposes

cc: